and comparative term whose meaning may vary in different contexts. As used here, certain guides are available from the context in which it is used, the legislative history surrounding adoption of section 7(b)(3), and the law of which it forms a part. A ''local'' enterprise engaged in the wholesale or bulk distribution of petroleum products is clearly intended to embrace the kind of enterprise operated by the merchants who requested the amendment; that is, one which provides farmers, homeowners, country merchants, and others in its locality with petroleum products in bulk quantities or at wholesale. The language of section 7(b)(3) makes it clear also that the enterprise will not be regarded as other than ''local'' merely because it has more than one bulk storage establishment. On the other hand, the section makes it equally clear that ordinarily an enterprise which is not located within a single State is not a local enterprise of the kind to which the exemption will apply. This follows from the express requirement that more than 75 percent of the enterprise's annual dollar volume of sales must be made ''within the State in which such enterprise is located.'' The legislative history provides further evidence of this intent. At the hearings before the Senate Labor Subcommittee a proponent of the amendment which eventually was enacted in somewhat different language (sec. 13(b)(10) of the Act which was repealed by the 1966 Amendments to the Act and replaced by section 7(b)(3)), stated with respect to the significance of the word ''local'':

> * * * the language which we have suggested in the proposed amendment ''locally owned and controlled establishments'', I admit that can point up some trouble and make some work for lawyers.
>
> We, however, in our endeavor to show our sincerity of only trying to cover local intrastate establishments, went overboard on this language.
>
> You will note that 75 percent of our business has to be performed in one State. I think that ''locally owned and controlled establishments'' language should better read ''independently owned and controlled local enterprises or establishment.'' (Sen. Hearings on amendments to the Fair Labor Standards Act, 87th Cong., first session, p. 416.)

The same witness also quoted from the Congressional Record of August 18, 1960, the discussion in the course of the consideration of the amendments to the Act by the Senate during the 86th Congress, second session, as follows:

> These wholesale and bulk distributors of petroleum products, commonly referred to as oil jobbers, are primarily local businessmen who acquire these products from their suppliers' bulk terminal in the State in which the jobber does business and sell these products to service stations, farmers, and homeowners in the State in which they maintain their place of business * * * I am advised that 98.3 percent of all the oil jobbers in the United States sell their products only in the State in which their place of business is located thus qualifying by any definition as local merchants. (Sen. Hearings on amendments to the Fair Labor Standards Act 87th Cong., first session, pp. 415–416.)

It thus appears that the word ''local'' was intended to confine the exemption to enterprises of such local merchants. The enterprise need not, of course, conduct all of its business within the State in which it is physically located, since the exemption specifically provides that it may make a portion of its sales outside the State in which it is located.

§ 794.114 The enterprise must be "independently owned and controlled."

Another requirement for exemption under section 7(b)(3) is that the enterprise must be ''independently owned and controlled''. Since this requirement is in the conjunctive, it must be established that the enterprise which is engaged in the wholesale or bulk distribution of petroleum products is both independently owned and independently controlled. (*Wirtz* v. *Lunsford*, 404 F. 2d 693 (C.A. 6).) At the hearing before the Senate Labor Subcommittee, when the amendment was proposed which eventually was incorporated in the Act as section 13(b)(10) by the 1961 amendments (later repealed by the 1966 amendments to the Act and replaced by section 7(b)(3)), a spokesman for proponents of the amendment made the following statement, which bears on this requirement for exemption:

> The designation ''independent'' as applied to an oil jobber means that he owns his own office, bulk storage, and delivery facilities; pays his own personnel, and in all respects

conducts his business as any other independent businessman.

It also means that the jobber is not a subsidiary of nor controlled by any so-called major oil company, although the jobber may sell the branded products of such a company.

Some jobbers own service stations which they lease to independent dealers and a small percentage of jobbers may operate one or more service stations with their own salaried personnel. (Senate Hearings on the Amendments to the Fair Labor Standards Act, 87th Cong., first session, p. 411.)

It appears, therefore, that the purpose of the requirement limiting the exemption to the enterprises which are ''independently owned and controlled,'' is to confine the exemption to those petroleum jobbers who own their own facilities and equipment and who are not subsidiaries nor controlled by any producer, refinery, terminal supplier or so-called major oil company. (See *Wirtz* v. *Lunsford,* cited above.) The fact that the petroleum jobber sells a branded product of a major oil company will not, of itself, affect the status of his enterprise as one which is ''independently owned and controlled''. So also the fact that the jobber owns gasoline service stations, which he leases or which he operates himself, will not affect the status of his enterprise as being ''independently owned and controlled''.

§ 794.115 "Independently owned."

Ownership of the enterprise may be vested in an individual petroleum jobber, or a partnership, or a corporation, so long as such ownership is not shared by a major oil company, or other producer, refiner, distributor or supplier of petroleum products, so as to affect the independent ownership of the enterprise. As noted in § 794.114, an enterprise will not be considered independently owned where it does not own its own office, bulk storage, and delivery facilities. The enterprise may also not be considered ''independently owned'' where it does not own its stock-in-trade. (See *Wirtz* v. *Lunsford,* 404 F.2d 693 (C.A. 6).) It is recognized that, in the ordinary course of business dealings, an independently owned enterprise may purchase its goods on credit and this, of course, will not affect its characterization as being ''independently owned'' within the meaning of the exemption. However, there may well be a question as to whether the enterprise is ''independently owned'' where the enterprise receives its petroleum products on consignment and the supplier lays claim to the ownership of the account receivable. Of possible relevance also is the intent evident in the statutory language to provide exemption only for an enterprise which can meet the specified tests which depend on ''the sales of such enterprise.'' The determination in such cases, as in other cases involving questions of independent ownership, will necessarily depend on all the facts.

§ 794.116 "Independently * * * controlled."

As explained in § 794.114, the enterprise in addition to being independently owned must also be ''independently controlled.'' The test here is whether the individual, partnership, or corporation which owns the enterprise also controls the enterprise as an independent businessman, free of control by any so-called major oil company or other person engaged in the petroleum business. Control by others may be evidenced by ownership; but control may exist in the absence of any ownership. For example where an enterprise engaged in the wholesale or bulk distribution of petroleum products enters into franchise or other arrangements which have the effect of restricting the products it distributes, the prices it may charge, or otherwise controlling the activities of the enterprise in those respects which are the common attributes of an independent businessman, these facts may establish that the enterprise is not ''independently controlled'' as required by the exemption under section 7(b)(3). (*Wirtz* v. *Lunsford,* 404 F. 2d 693 (C.A. 6).)

§ 794.117 Effect of franchises and other arrangements.

Whether a franchise or other contractual arrangement affects the status of the enterprise as ''an independently owned and controlled * * * enterprise,'' depends upon all the facts including the terms of the agreements and arrangements between the parties as well as the other relationships that have been established. The term ''franchise''